

Justice-Involved Individuals – SCENARIOS

Scenario 1 – Beatrice Who Has Dementia

Beatrice is a 72-year old currently incarcerated woman who was diagnosed with Alzheimer’s disease at age 65. Since then, her physical and mental conditions have been steadily declining. She is able to participate in her activities of daily living but needs extensive cueing and assistance with toileting. She is pleasant, calm, oriented to self and some family members, but cannot recall the events that led to her arrest and imprisonment. Her family maintains contact with her and petitioned the court for compassionate release due to her advancing age as well as her physical and mental decline. Her children are unable to care for her at home and have been contacting local nursing homes for admission and long-term care. Because of Beatrice’s condition the court has granted her a compassionate release without restrictions.

Q: Can a nursing home with a dementia unit admit Beatrice without jeopardizing certification for Medicare or Medicaid?

A: We do not see any significant risk in this case. The nursing home has an appropriate unit that can provide the needed services for Beatrice. Because her behavior does not appear to endanger the health, safety, or rights of other individuals, the facility is not likely to be challenged in its ability to concurrently provide a safe environment for other residents if they admit Beatrice. The situation would be the same if the correctional agency was seeking the placement because there was no family available.

Scenario 2 –Secured Nursing Homes

XYZ Nursing Home was built to exclusively house individuals released from correctional facilities, either on compassionate release, as a condition of parole, or deemed incompetent to stand trial. The entire facility is locked and there is an onsite office maintained by the state parole board where parole officers are stationed. The nursing home has one physician who provides medical services to the residents and the residents are not free to choose their own attending physician.

All incoming mail and packages for residents are opened and searched by facility staff and any item deemed contraband is discarded. Resident rooms are searched on a daily basis for items that are not allowed, such as cell phones and picture frames containing glass or metal. Because cell phones are not allowed, there is only one telephone available for all residents and it is placed in the hallway next to the nurses’ station with limited times for use and no privacy.

The nurses’ station is completely enclosed in bullet-proof glass from floor to ceiling, with only a slot through which small items can be passed; similar to a bank teller’s station.

Q: Can XYZ Nursing Home be certified for Medicaid and would the State be able to obtain Federal Financial Participation?

A: No. XYZ Nursing home could not be certified for Medicare or Medicaid. Without such certification, the State would not be eligible for Federal Financial Participation due to facility-wide policies and procedures that violate CMS’ Requirements for Participation. For example, facility restrictions placed on the individual violate:

- The resident’s right to privacy in written communication and to receive mail that is unopened,

- The right to have reasonable access to the use of a telephone where calls can be made without being overheard,
- The right to choose a personal attending physician,
- The right to be free from restraint or seclusion used for discipline,
- Additionally, the facility must provide a comfortable and homelike environment and allow the resident to use his or her personal belongings to the extent possible.

However, federal requirements do not prevent a State from operating or commissioning the operation of such a specialized facility. Since certification under Medicare or Medicaid would not be available, any public funding for such a facility would generally derive from State-only and/or local sources.

Scenario 3 – Inmate Edward Treated in the Hospital

Staff from the local jail bring 57-year old inmate Edward to Main Street Hospital’s emergency department (ED) for evaluation of severe right lower quadrant abdominal pain. After a medical screening examination, the ED staff determine that Edward has a ruptured appendix and needs to be admitted to the hospital for surgery. The hospital staff is responsible for making the determination as to what unit or floor Edward will be admitted to, based on the treatment needed.

Throughout his admission, although Edward is the hospital’s patient, he remains under law enforcement jurisdiction. He is never in the custody of the hospital, but is always in the custody of correctional facility staff.

Q. Are there particular challenges for the hospital in serving Edward and maintaining compliance with federal requirements?

Patients, including justice involved individuals, must be admitted to units which meet their healthcare needs. While a Medicare/Medicaid-participating hospital cannot have a “prison unit” or a unit dedicated exclusively to the care of prisoners or inmates, it could have one or more pre-selected nursing units where prisoners or inmates would typically be placed, based on diagnoses or clinical or behavioral needs which such individuals have in common. For example, Main Street Hospital may have three medical surgical units that provide care to patients with surgical emergencies and each of those three units routinely admits any patient with a ruptured appendix to any of the three units. The hospital could designate one of those units as the unit where inmates or prisoners with surgical emergencies would be placed. Inmates or prisoners would not be the only patients who are admitted to that unit. The hospital staff who work primarily on the designated unit may have specialized training to work with individuals who are in custody of law enforcement or correctional staff.

Furthermore, some prisoners may have healthcare needs that would likely not be appropriate for admission to the designated unit.

For example, the designated unit may not be the appropriate unit for treatment when–

- The individual is pregnant and in labor and there is a labor and delivery unit;
- The individual was burned and there is a burn unit.
- The individual is having a cardiac event and there is an intensive care unit or cardiac care unit.

Scenario 4 – Inmate John Treated in the Hospital & Transferred to a SNF

Inmate John, with a known diagnosis of epilepsy had a seizure that caused a life-threatening airway obstruction that required tracheal intubation and use of a mechanical ventilator. He was admitted to University Hospital for care. The care team's plan was that when John no longer needed the acute level of care provided at the hospital, he would be released to a nursing home with the capability of providing ventilator care. Once he gained strength, the facility staff would gradually reduce ventilator support so that John could be extubated and breathe on his own. The prison infirmary was not properly equipped and the staff was not trained for this specialized care.

Q. Are there particular challenges for either the hospital or long term care facility in serving John and maintaining compliance with federal requirements?

Acute Care Hospital: We do not see significant risk in the hospital's ability to serve John and maintain compliance with the hospital CoPs. The acute care CoPs, designed for short-term treatment, do not have the same patient rights that are prominent in residential care environments (such as nursing homes) that are intended to function as an individual's home. An acute care hospital may be able to provide the care John needs and also not jeopardize its participation in Medicare and Medicaid if:

- The hospital ensured that all care provided to John is provided in a manner that maintained compliance with all hospital Conditions of Participation, including the Patient's Rights CoP expressed at 42 CFR 482.13.

The hospital did not act as the agent of law enforcement in enforcing any of the restrictions placed on John by the Department of Corrections. The use of soft restraints in an intubated patient may become necessary if the patient becomes agitated and attempts to remove his endotracheal tube because serious harm or death could occur otherwise. The patient's attending physician must be notified immediately to order the restraints. The hospital must have policies and procedures regarding the use of restraints to protect the patient from extubating himself.

Nursing Home: A nursing home may be able to provide the care John needs and also not jeopardize its participation in Medicare and Medicaid if:

- The nursing home ensured that all care provided to John is provided in a manner that maintained compliance with all Requirements for Participation,
- The nursing home did not act as the agent of law enforcement in enforcing any restrictions placed on John by the Department of Corrections,
- The nursing home performed an adequate assessment of the resident's needs, preferences, and conditions which, in all likelihood, would involve reaching out to the responsible caregivers of the environment(s) from which John is being transitioned to obtain pertinent information.

The determination may change as John's medical condition improves. For example, if John were successfully weaned from the ventilator in the nursing home, and if the Department of Corrections imposed additional restrictions on John, there would need to be a reassessment of whether or not the nursing home could provide care and continue to meet the Medicare/Medicaid requirements.

Scenario 5 – Inmate Albert with Coronary Artery Disease

Inmate Albert developed mild chest pain and shortness of breath. He was transported to University Hospital and admitted to an area of the hospital that is leased by the Department of Corrections to provide inpatient medical care and services exclusively to prisoners. While under observation in the leased unit, Albert became increasingly short of breath and his chest pain worsened. The Department of Corrections clinical staff working in the leased unit determined that Albert needed an urgent medical evaluation to diagnose and treat his worsening symptoms. Albert was quickly transported to the ED of University Hospital. The medical screening examination determined Albert had blocked coronary arteries and required a coronary artery bypass graft, which was a service that could only be provided in the Medicare/Medicaid-certified area of University Hospital.

Q: Can University Hospital provide services to Albert and still maintain compliance with Federal requirements?

Department of Corrections or law enforcement agencies may enter into a contract with a Medicare/Medicaid-participating hospital to lease space in order to establish an inpatient prison healthcare facility. That leased space (which may or may not be locked) cannot participate in Medicare or Medicaid and must be distinct and separate from the certified hospital. The leased space is never considered a “unit” of the Medicare/Medicaid participating hospital. Although the prison inpatient healthcare facility could contract with the leasing hospital for some services, the hospital cannot share or co-mingle staff and services with the prison facility.

However, if a patient of the contracted prison healthcare facility requires care that is beyond the capabilities of the leased space, the patient may be evaluated in the ED and if needed, be admitted to the certified hospital (i.e., physically transferred from the “prison healthcare facility”) to receive services that can be billed to Medicaid. Additionally, all Medicare requirements must be met by the hospital ED and inpatient units, including the hospital CoPs and EMTALA.

Therefore, Albert could initially be admitted to the area leased by the Department of Corrections, but would not be eligible for Medicaid benefits during his stay there. When he was admitted as an inpatient to the certified area of University Hospital for his coronary artery bypass graft and ICU stay, he would be Medicaid eligible and those services could be billed to Medicaid.